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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Michael Anthony Williams,

13 Defendant.
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No. CR-18-01695-005-TUC-JAS (EJM)

ORDER

15 **DISCUSSION**

16 Pending before the Court is a Report and Recommendation (Doc. 1439) issued by
17 United States Magistrate Judge Markovich. The Report and Recommendation
18 recommends granting Defendant Michael Anthony Williams' Motion for a Hearing
19 Pursuant to *Franks v. Delaware* (Doc. 1141) and suppressing the evidence seized from
20 Defendant's vehicle and residence. The government objected to the Report and
21 Recommendation and Defendant responded.¹ In addition to reviewing the Report and
22 Recommendation and the underlying briefing, the government's objection, Defendant's
23 response, the relevant portions of the record, and the pertinent authority, the Court has also
24 reviewed the video evidence that was used to obtain the search warrant from the state court
25 judge and that was viewed by Judge Markovich.

26 As a threshold matter, as to any new evidence, arguments, and issues that were not
27 timely and properly raised before United States Magistrate Markovich, the Court exercises

28 ¹ Unless otherwise noted by the Court, internal quotes and citations have been omitted
when citing authority throughout this Order.

1 its discretion to not consider those matters and considers them waived. *United States v.*
2 *Howell*, 231 F.3d 615, 621-623 (9th Cir. 2000) (“[A] district court has discretion, but is not
3 required, to consider evidence presented for the first time in a party's objection to a
4 magistrate judge's recommendation . . . [I]n making a decision on whether to consider
5 newly offered evidence, the district court must . . . exercise its discretion . . . [I]n providing
6 for a *de novo* determination rather than *de novo* hearing, Congress intended to permit
7 whatever reliance a district judge, in the exercise of sound judicial discretion, chose to
8 place on a magistrate judge's proposed findings and recommendations . . . The magistrate
9 judge system was designed to alleviate the workload of district courts . . . To require a
10 district court to consider evidence not previously presented to the magistrate judge would
11 effectively nullify the magistrate judge's consideration of the matter and would not help to
12 relieve the workload of the district court. Systemic efficiencies would be frustrated and the
13 magistrate judge's role reduced to that of a mere dress rehearsal if a party were allowed to
14 feint and weave at the initial hearing, and save its knockout punch for the second round . .
15 . Equally important, requiring the district court to hear evidence not previously presented
16 to the magistrate judge might encourage sandbagging. [I]t would be fundamentally unfair
17 to permit a litigant to set its case in motion before the magistrate, wait to see which way
18 the wind was blowing, and—having received an unfavorable recommendation—shift gears
19 before the district judge.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9th Cir.
20 2003) (“Finally, it merits re-emphasis that the underlying purpose of the Federal
21 Magistrates Act is to improve the effective administration of justice.”).

22 Assuming that there has been no waiver, the Court has conducted a *de novo* review
23 as to the government's objections. See 28 U.S.C. § 636(b)(1)(C) (“Within fourteen days
24 after being served with [the Report and Recommendation], any party may serve and file
25 written objections to such proposed findings and recommendations as provided by rules of
26 court. A judge of the court shall make a *de novo* determination of those portions of the
27 report or specified proposed findings or recommendations to which objection is made. A
28 judge of the court may accept, reject, or modify, in whole or in part, the findings or

1 recommendations made by the magistrate judge. The judge may also receive further
2 evidence or recommit the matter to the magistrate judge with instructions.”).

3 In addition to reviewing the Report and Recommendation and any objections and
4 responsive briefing thereto, the Court’s *de novo* review of the record includes review of the
5 record and authority before United States Magistrate Judge Markovich which led to the
6 Report and Recommendation in this case.

7 Upon *de novo* review of the record and authority herein, the Court finds the
8 government’s objections to be without merit, rejects those objections, and adopts United
9 States Magistrate Judge Markovich’s Report and Recommendation. *See, e.g., United*
10 *States v. Rodriguez*, 888 F.2d 519, 522 (7th Cir. 1989) (“Rodriguez is entitled by statute to
11 *de novo* review of the subject. Under *Raddatz* [447 U.S. 667 (1980)] the court may provide
12 this on the record compiled by the magistrate. Rodriguez treats adoption of the magistrate’s
13 report as a sign that he has not received his due. Yet we see no reason to infer abdication
14 from adoption. On occasion this court affirms a judgment on the basis of the district court’s
15 opinion. Affirming by adoption does not imply that we have neglected our duties; it means,
16 rather, that after independent review we came to the same conclusions as the district judge
17 for the reasons that judge gave, rendering further explanation otiose. When the district
18 judge, after reviewing the record in the light of the objections to the report, reaches the
19 magistrate’s conclusions for the magistrate’s reasons, it makes sense to adopt the report,
20 sparing everyone another round of paper.”); *Bratcher v. Bray-Doyle Independent School*
21 *Dist. No. 42 of Stephens County, Okl.*, 8 F.3d 722, 724 (10th Cir. 1993) (“*De novo* review
22 is statutorily and constitutionally required when written objections to a magistrate’s report
23 are timely filed with the district court . . . The district court’s duty in this regard is satisfied
24 only by considering the actual testimony [or other relevant evidence in the record], and not
25 by merely reviewing the magistrate’s report and recommendations . . . On the other hand,
26 we presume the district court knew of these requirements, so the express references to *de*
27 *novo* review in its order must be taken to mean it properly considered the pertinent portions
28 of the record, absent some clear indication otherwise . . . Plaintiff contends . . . the district

1 court's [terse] order indicates the exercise of less than *de novo* review . . . [However,]
 2 brevity does not warrant look[ing] behind a district court's express statement that it engaged
 3 in a *de novo* review of the record.”); *Murphy v. International Business Machines Corp.*, 23
 4 F.3d 719, 722 (2nd Cir. 1994) (“We . . . reject Murphy's procedural challenges to the
 5 granting of summary judgment . . . Murphy's contention that the district judge did not
 6 properly consider her objections to the magistrate judge's report . . . lacks merit. The judge's
 7 brief order mentioned that objections had been made and overruled. We do not construe
 8 the brevity of the order as an indication that the objections were not given due
 9 consideration, especially in light of the correctness of that report and the evident lack of
 10 merit in Murphy's objections.”); *Gonzales-Perez v. Harper*, 241 F.3d 633 (8th Cir. 2001)
 11 (“When a party timely objects to a magistrate judge's report and recommendation, the
 12 district court is required to make a *de novo* review of the record related to the objections,
 13 which requires more than merely reviewing the report and recommendation . . . This court
 14 presumes that the district court properly performs its review and will affirm the district
 15 court's approval of the magistrate's recommendation absent evidence to the contrary . . .
 16 The burden is on the challenger to make a *prima facie* case that *de novo* review was not
 17 had.”); *Brunig v. Clark*, 560 F.3d 292, 295 (5th Cir. 2009) (“Brunig also claims that the
 18 district court judge did not review the magistrate's report *de novo* . . . There is no evidence
 19 that the district court did not conduct a *de novo* review. Without any evidence to the
 20 contrary . . . we will not assume that the district court did not conduct the proper review.”).²

21 ² See also *Pinkston v. Madry*, 440 F.3d 879, 893-894 (7th Cir. 2006) (the district court's
 22 assurance, in a written order, that the court has complied with the *de novo* review
 23 requirements of the statute in reviewing the magistrate judge's proposed findings and
 24 recommendation is sufficient, in all but the most extraordinary of cases, to resist assault on
 25 appeal; emphasizing that “[i]t is clear that Pinkston's argument in this regard is nothing
 26 more than a collateral attack on the magistrate's reasoning, masquerading as an assault on
 27 the district court's entirely acceptable decision to adopt the magistrate's opinion . . .”);
 28 *Garcia v. City of Albuquerque*, 232 F.3d 760 (10th Cir. 2000) (“The district court's order
 is terse . . . However, neither 28 U.S.C. § 636(b)(1) nor Fed.R.Civ.P. 72(b) requires the
 district court to make any specific findings; the district court must merely conduct a *de
 novo* review of the record . . . It is common practice among district judges . . . to [issue a
 terse order stating that it conducted a *de novo* review as to objections] . . . and adopt the
 magistrate judges' recommended dispositions when they find that magistrate judges have
 dealt with the issues fully and accurately and that they could add little of value to that
 analysis. We cannot interpret the district court's [terse] statement as establishing that it
 failed to perform the required *de novo* review . . . We hold that although the district court's

1 **CONCLUSION**

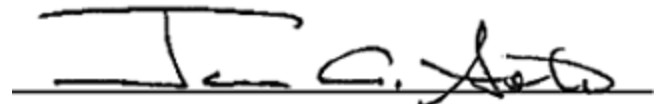
2 Accordingly, IT IS HEREBY ORDERED as follows:

3 (1) United States Magistrate Judge Markovich's Report and Recommendation (Doc.
4 1439) is accepted and adopted in its entirety.

5 (2) The government's objections are rejected.

6 (3) Defendant's Motion for a Hearing Pursuant to *Franks v. Delaware* (Doc. 1141) is
7 GRANTED and the evidence seized from Defendant's vehicle and residence is
8 suppressed in accordance with the Report and Recommendation.

9 Dated this 16th day of June, 2022.

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13 Honorable James A. Soto
14 United States District Judge
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24 decision is terse, this is insufficient to demonstrate that the court failed to review the
25 magistrate's recommendation *de novo*"); *Goffman v. Gross*, 59 F.3d 668, 671 (7th Cir.
26 1995) ("The district court is required to conduct a *de novo* determination of those portions
27 of the magistrate judge's report and recommendations to which objections have been filed.
28 But this *de novo* determination is not the same as a *de novo* hearing . . . [I]f following a
review of the record the district court is satisfied with the magistrate judge's findings and
recommendations it may in its discretion treat those findings and recommendations as its
own.").